

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

3 PETER DELVECCHIA, individually ) CASE NO. 2:19-cv-01322-KJD-DJA  
4 and as next friend of D.A., a )  
Minor, ) Las Vegas, Nevada  
5 Plaintiffs, ) Friday, November 4, 2022  
6 vs. ) Courtroom 3A  
7 FRONTIER AIRLINES, INC., SCOTT ) Recording method: Liberty/CRD  
WARREN, and REX SHUPE, ) 1:31 p.m. - 2:12 p.m.  
8 Defendants. ) HEARING RE MOTION TO COMPEL  
9 ) **C E R T I F I E D C O P Y**

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12 TRANSCRIPT OF PROCEEDINGS

13 BEFORE THE HONORABLE DANIEL J. ALBREGTS,  
14 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

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16 APPEARANCES: (See next page)

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19 United States District Court  
20 333 Las Vegas Boulevard South  
21 Las Vegas, Nevada 89101

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24 Proceedings recorded by electronic sound recording.  
25 Transcript produced by mechanical stenography and computer.

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1 LAS VEGAS, NEVADA; FRIDAY, NOVEMBER 4, 2022; 1:31 P.M.

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3 P R O C E E D I N G S

4 **COURTROOM ADMINISTRATOR:** Peter DelVecchia vs.

5 Frontier Airlines, et al., 2:19-cv-01322-KJD-DJA. This is before  
6 the Court on Motion Docket 190.

7 Counsel, make your appearance for the record, please.

8 **MR. MCKAY:** John McKay for the plaintiffs.

9 **THE COURT:** All right. Good afternoon, Mr. McKay.

10 **MR. MCKAY:** Good afternoon, Your Honor.

11 **MR. MAYE:** Good afternoon, Your Honor. Brian Maye  
12 for defendants.

13 **THE COURT:** Good afternoon, Mr. Maye.

14 **MR. MICHALEK:** Charles Michalek, local counsel, for  
15 defendants.

16 **THE COURT:** All right. Good afternoon.

17 As my courtroom deputy indicated, we are here on No.  
18 190, Frontier's motion to compel. In that motion, Frontier's  
19 first motion to compel -- well, before I begin, let me back up  
20 and say, for the parties' edification, I intend to rule from the  
21 bench on the motion to compel and a couple of other issues, and  
22 the transcript of today's hearing will be the order. So any  
23 appeal of the decision today, you'll use the transcript at the  
24 end after I hear from the parties.

25 After I give some background and some other

1 information, I will make a record as to the case law and the  
2 reasons for my decision.

3 So, with that, let's talk about the motion. It's  
4 Frontier's first motion to compel. They moved to compel  
5 plaintiffs to respond, first, to their second set of  
6 interrogatories to Peter DelVecchia, and second, to their second  
7 set of requests for production of documents.

8 Plaintiffs responded to those interrogatories by  
9 essentially copying and pasting objections that Frontier had made  
10 to a motion to compel that plaintiffs had filed and cited to  
11 that, saying that they weren't going to respond.

12 Plaintiffs responded to the requests for production  
13 of documents, which were directed directly to Peter DelVecchia,  
14 by saying that A.D., the other plaintiff in the case, did not  
15 have responsive information.

16 In response to the motion to compel, plaintiffs  
17 essentially argue that the Court, both this court and the prior  
18 magistrate judge, have not been treating them fairly.

19 Essentially, for the interrogatories, they assert  
20 that the Court accepted Frontier's objections when they objected  
21 to motions to compel, even though they were boilerplate, so that  
22 somehow is the basis for me to accept their objections now.

23 For the requests for production of documents, they  
24 assert that they were just being literal and that nothing can be  
25 wrong with answering a question that is precisely as it is

1 written, according to the response. They again raise the case  
2 law, they argue, Frontier misrepresented and say that their  
3 answers are far better than claiming the federal regulations says  
4 something that it clearly does not say.

5 The response, I must admit, is much in the same vein  
6 as the response to the interrogatories were.

7 In reply, Frontier says that the requests that they  
8 propounded are different than the ones that they responded and  
9 objected to that were cited by plaintiffs because their  
10 interrogatories sought relevant information, which was  
11 proportional to the case, unlike the plaintiffs, at least one of  
12 which sought passenger information from people that had flown on  
13 domestic flights, and they complained about discrimination with  
14 no limitations.

15 And so, I am here to decide whether I should grant  
16 this motion to compel. I brought the parties here today because,  
17 frankly, the responses to the interrogatories are unlike anything  
18 I've seen, not only in my three -- almost three and a half years  
19 on the bench, but in the 30 years of practice, not a lot of which  
20 was civil but enough to know what would be proper. And I've  
21 never, frankly, seen interrogatory responses like that, nor a  
22 response to the motion to compel that essentially says, because  
23 you denied our motions to compel, you should deny their motions  
24 to compel.

25 Frankly, Frontier has not asked for sanctions, but I

1 was so taken aback initially by the responses to interrogatories,  
2 the unprofessional nature of those, and the response to the  
3 motion to compel that I was considering sua sponte granting  
4 sanctions if I grant the motion to compel, which I'm inclined to  
5 do. I've rethought that and I haven't made a final decision on  
6 that. I recognize that I brought Mr. McKay here from out of  
7 state, and so, on some levels, there's a sanction related to  
8 having to travel to Las Vegas and appear in person for this  
9 motion.

10 But given the history of the case and the nature of  
11 this motion and the response, I felt compelled to bring the  
12 parties in and to have a hearing on this in the hopes that going  
13 forward, we can somehow streamline the issues that the discovery  
14 disputes have continually brought and perhaps get this thing to  
15 the finish line as it relates to discovery.

16 So, you know, Mr. McKay, with those comments, first,  
17 how do you justify cutting and pasting objections that they made  
18 to yours in response to interrogatories?

19 **MR. MCKAY:** Would Your Honor like me to stand to  
20 address the Court?

21 **THE COURT:** Well, most people do.

22 **MR. MCKAY:** Your Honor, I -- I do have to question  
23 where the Court's hostility towards me comes from.

24 **THE COURT:** Well, so why do you think I have  
25 hostility because I deny motions to compel?

1           **MR. McKAY:** Your language in your orders has treated  
2 Frontier with kid gloves and plaintiffs rather harshly. And I  
3 don't know how that got started, but I would like to find a way  
4 that we can find a middle ground to end it. I'm glad we're  
5 having a hearing today. I'm glad to meet you in person after  
6 three years of litigation. I know these have been difficult  
7 years with COVID and -- and all.

8           I will tell the Court, quite honestly, this is not  
9 how I practice. It's not how I long to practice. It's not how I  
10 like to practice. It is not how I have practiced in 37 years --

11           **THE COURT:** So why now?

12           **MR. McKAY:** -- of litigation.

13           **THE COURT:** Why now?

14           **MR. McKAY:** Because of the circumstances in this  
15 case, Your Honor. I have never seen -- in my experience  
16 litigating federal cases all over this country in many federal  
17 courts, I have never seen such hostility from the bench. I feel  
18 that this is not --

19           **THE COURT:** Can you cite to specific --

20           **MR. McKAY:** Yeah.

21           **THE COURT:** -- hostilities? What -- this is --

22           **MR. McKAY:** Your August -- I think it was  
23 August -- 30 order, the order that came out after the two motions  
24 for sanctions, first of all, informed me that in the Court's  
25 opinion, I didn't know what I was doing procedurally because I

1 filed a motion for sanctions because they had redacted  
2 information from documents that you, Your Honor, had ordered them  
3 to produce and Judge Dawson, on appeal, also ordered them to  
4 produce.

5 14 months later, they started producing documents,  
6 and when they did, they redacted important information from them.  
7 Under the rules of civil procedure that I've known that I follow  
8 in other courts, the next step, if somebody doesn't comply with  
9 an order to produce documents, is a motion under Rule 37 for  
10 sanctions, which is why I filed a motion for Rule 37 sanctions.

11 Yet, the Court took great offense at the fact that I  
12 had and issued the order stating that plaintiff's counsel filed  
13 the wrong motion and should have filed a motion to compel.

14 **THE COURT:** How do you interpret that I took offense  
15 to that?

16 **MR. McKAY:** Well, it didn't sound very accepting of  
17 what plaintiffs had just done, even though it was entirely within  
18 the bounds and, in fact, what the rules of procedure require.

19 **THE COURT:** So if a judicial officer disagrees with  
20 you or rules against you, he's suddenly hostile and -- and  
21 unfavorable to you?

22 **MR. McKAY:** No. I wouldn't say that, Your Honor.

23 **THE COURT:** All right. Go ahead.

24 **MR. McKAY:** Plaintiffs, as I pointed out in our  
25 response to this motion, have filed five motions to compel and



1 have had five motions to compel at least partially denied.  
2 Frontier files one motion to compel, and before I even had a  
3 chance to respond to it, they have a hearing set.

4 I didn't get a hearing. Plaintiffs didn't get a  
5 hearing for any of their motions to compel, which were all  
6 denied. Some of them were -- were denied sua sponte.

7 I'm trying to figure out what's going on here. I  
8 want to know if this is a safe place for my clients to try their  
9 civil rights and battery and false imprisonment and defamation  
10 claims --

11 **THE COURT:** I --

12 **MR. MCKAY:** -- I'm at a loss.

13 **THE COURT:** And I am, too, because frankly, I'm  
14 astonished by your accusations. I mean --

15 **MR. MCKAY:** I'm not accusing you, Your Honor.

16 **THE COURT:** I think you're accusing me of being  
17 hostile and unfair and biassed toward Frontier, aren't you?

18 **MR. MCKAY:** I am questioning why we have such a  
19 discrepancy between how Frontier's filings get -- get treated and  
20 how plaintiffs' filings get treated. Our 39 --

21 **THE COURT:** So -- each one -- I'll answer that. Each  
22 one is getting reviewed on the merits of each one. And on my  
23 recollection of the motions to compel that you're referring to  
24 that you filed, we found that on many occasions, they were  
25 overbroad. It was too -- it was too broad in scope. It was too

1 onerous. It went too far back in time and I limited that.

2 And then the idea that during COVID, as you're filing  
3 your motions to compel and I'm ruling on the pleadings and then I  
4 set this for a hearing, that's not because it was theirs. That's  
5 because of the history of this case, the tone of the response to  
6 these interrogatories, as frustrated and angry as you might be.

7 And let me tell you, as a practitioner, I get it  
8 because I used to feel that way on occasion, too, and I  
9 represented some very unpopular people. But it  
10 never -- something like this in the response to interrogatories  
11 would have been slept on for a night or two and then probably  
12 thrown away. And then I would have responded in -- you know, I  
13 would have objected another way, but it wouldn't have been -- I  
14 mean, that, to me, is unimaginable for somebody with your  
15 experience and background.

16 And -- and to make the claim that, Well, you denied,  
17 in part, four of ours. You should deny theirs. That's not the  
18 law, but that's what you're saying.

19 **MR. MCKAY:** No, sir. I'm -- you've hit the nail on  
20 the head. I'm expressing frustration on behalf of two very nice  
21 people that I represent. They are awesome people, and --

22 **THE COURT:** And you have some valid claims given what  
23 I know about the allegations of what took place on the flight  
24 that day and what happened to your clients. But it doesn't give  
25 you cart blanche to go so far as you're wanting to go on some of

1 these discovery requests, and that's all I found. That doesn't  
2 mean I'm hostile to your clients or their claim.

3 **MR. McKAY:** You have my humblest apologies. And I  
4 mean that. Yes. I should have slept on it. But it was an -- it  
5 was out of complete frustration at the way discovery is going in  
6 this case.

7 I am trying to prove a case here. I am trying to get  
8 decent discovery for my clients who have claims for reckless  
9 disregard by Frontier Airlines, not four flight attendants,  
10 Frontier Airlines of passengers protected civil rights. Yet, the  
11 rulings from this Court are that I can have documents written by  
12 Frontier, primarily, that -- that talk about complaints made  
13 against it and in which they determine that no discrimination  
14 occurred. But I can't ask anybody else about whether  
15 discrimination occurred, the circumstances under which it  
16 occurred, whether Frontier is right or wrong, if it was ever  
17 resolved, did they file suit, none of -- how is it that I cannot  
18 ask information about a document that the Court has held is  
19 relevant?

20 **THE COURT:** Well, okay. So that's -- and that's not  
21 what we're here on today --

22 **MR. McKAY:** I understand.

23 **THE COURT:** -- and I know you responded to some of  
24 the issues I raised.

25 But let me ask you this: How is...

1                   **MR. McKAY:** There's nothing good in what I've  
2 written, Your Honor --

3                   **THE COURT:** Well, but -- so -- I mean, how is this  
4 objectionable, any person who witnessed defendant Warren commit a  
5 battery on the plaintiff?

6                   **MR. McKAY:** Because such person had to have been a  
7 passenger on the flight. And so far, the rulings have been that  
8 the Court will not rule on 14 CFR 243.9 subsection C, which  
9 Frontier contends cloaks in absolute confidentiality the name of  
10 any passenger aboard a domestic flight in the United States.

11                   Now, if they can't produce the names of those people,  
12 how is it that I should be required to disclose the names of  
13 those people?

14                   **THE COURT:** Do you have -- you don't have to disclose  
15 anything other than, do you have a witness or multiple witnesses  
16 that witnessed that?

17                   Either you do or you don't.

18                   **MR. McKAY:** Either we do or we don't. Right.

19                   **THE COURT:** If you don't, you can say, We don't --

20                   **MR. McKAY:** At the moment --

21                   **THE COURT:** -- and if you do, you can say, We do, and  
22 we're not giving them to you, and here's the reasons why we're  
23 not.

24                   And then I have a basis to -- but --

25                   **MR. McKAY:** But just require the names?

1                   **THE COURT:** Right.

2                   **MR. McKAY:** Yeah. I can't give the names because  
3 I've asked six times for the Court to rule on whether or not  
4 names of domestic passengers on airline flights in the United  
5 States are confidential, an issue raised by the defendant, and  
6 the Court six times has declined to rule on that, and I have no  
7 idea why.

8                   **THE COURT:** So that's your basis of your objection,  
9 not what you objected to when you responded to the interrogatory?

10                  **MR. McKAY:** I said, you need -- response to the  
11 interrogatory, that it may be requiring me to --

12                  **THE COURT:** Is that the privacy rights you're saying  
13 might be violated?

14                  **MR. McKAY:** Yes. That is exactly what they said to  
15 me, and the Court endorsed that.

16                         So how can I be required to provide something that  
17 they were not required to?

18                  **THE COURT:** Well, my recollection of your request was  
19 something much more broad than specific individuals who were on  
20 that flight or might have witnessed what was on that flight. My  
21 response -- and I don't know exactly which one because, you know,  
22 this is one of those dreaded cases. When I click on it, it says,  
23 Do you want the last 30 days, the last 90 days, or you really  
24 want the whole case? And so, there's a ton of stuff on the  
25 docket, and so I can't sit here and tell you I know every piece

1 of order -- every order, every piece of paper on the docket.

2 **MR. MCKAY:** I understand.

3 **THE COURT:** But, I -- you know, there's a big  
4 difference from saying there is a finite number of people who  
5 might have been on this flight who might have witnessed what  
6 you're claiming they witnessed and are relevant witnesses.  
7 That's different than saying, Give me all the names of people.  
8 And so equate those two, which is what I sense you're doing. I  
9 may be wrong, but what I sense you're doing is -- is it's apples  
10 and oranges.

11 **MR. MCKAY:** No. It's not, because the only reason  
12 they said they redacted the names from documents that Your Honor  
13 ordered them to produce -- they, on their own, redacted the names  
14 and said, because we must do so because federal law requires the  
15 redaction of names of passengers on flights.

16 **THE COURT:** But that -- that's what you're saying is  
17 on flights. We're talking -- you're asking for a broad --

18 **MR. MCKAY:** This is a flight. Okay. Again, Your  
19 Honor, I am taking a hard line on these, and the -- and I don't  
20 like to do it. Okay?

21 I -- believe me, I have sat on professionalism  
22 panels. I have taught professionalism. I don't like being in  
23 this position. But 75 percent of the honest and responsible  
24 requests that I have served on this defendant have been responded  
25 to in exactly this same way. And that was my point in cutting

1 and pasting their objections, because those are the objections  
2 that I got to 75 percent of my discovery requests. And the Court  
3 has endorsed that in this case.

4 And my point, as I said in the brief, is that if that  
5 is the way it's going to be, then it has to be equal for both  
6 sides.

7 **THE COURT:** And that just sounds exactly like a  
8 petulant child, because that's not the discovery rules.  
9 And -- and again, I go back to on the things that I've denied  
10 that you've requested. Number one, I'm certain that I've applied  
11 what I believe is the law and the rules to those requests; and  
12 number two, every time I denied them, they were requests, at  
13 least my recollection and impression is, they were so overbroad  
14 and so beyond what would be required in discovery.

15 On some levels, it almost looked like you might be  
16 looking for other plaintiffs, other class actions, things like  
17 that. That's not appropriate in discovery. And I'm trying to  
18 balance what you're entitled to, because, I'll say it again, I am  
19 very mindful that these allegations and some that even appear to  
20 have been conceded on some levels by Frontier are very  
21 troublesome. And I want to give you every opportunity you have  
22 to litigate this, but I'm not just going to open the flood gates  
23 and say that every passenger that's ever been on a flight or  
24 everything back 10 or 15 years or every claim of discrimination,  
25 that -- that --

1                   **MR. McKAY:** I don't think Your Honor understands what  
2 I'm saying --

3                   **THE COURT:** Well, apparently, I'm not nearly as  
4 intelligent as you. I mean, I'm trying to understand it.

5                   **MR. McKAY:** (Indiscernible). My legal arguments are  
6 the rantings of a petulant child, and --

7                   **THE COURT:** Go back and read the transcript. You're  
8 basically saying it's tit for tat. I denied yours. I should  
9 deny theirs.

10                   Isn't that what you're telling me?

11                   **MR. McKAY:** I'm saying if the objection was  
12 appropriate, it was a boilerplate objection. If it's appropriate  
13 for them to send out boilerplate objections, then equanimity  
14 requires that --

15                   **THE COURT:** But nonproportional -- nonproportional  
16 and over duly burdensome, those are things that are always the  
17 buzz words for -- for discovery and whether we're going to grant  
18 a motion to compel or deny a motion to compel. So to the extent  
19 they're boilerplate, that's pretty settled law.

20                   **MR. McKAY:** That you can't do it. Yet it's never  
21 been applied to Frontier in this court.

22                   **THE COURT:** And, you know, and again, it shouldn't  
23 be -- and it should be stated for the record, it's not just me  
24 you're accusing of doing this. It's Judge Koppe, who was the  
25 magistrate judge before this. And, you know, suddenly, every



1 magistrate judge or at least two out of the five in this  
2 district, they're just completely unfair to you and side with  
3 Frontier from what you're arguing.

4           **MR. McKAY:** I have not accused you or Judge Koppe of  
5 a thing. I have not been petulant, in my opinion. I would like  
6 to make the argument that my clients have a claim against  
7 Frontier, which alleges across the board reckless disregard for  
8 passengers' rights. I would like to be able to prove that.

9           I cited the Court to the Ninth Circuit case of  
10 *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, page 1263,  
11 Ninth Circuit, 2010 case, that says our adversarial system  
12 depends on the principle that all sides to a dispute must be  
13 given the opportunity to fully advocate their views of the issues  
14 presented in a case.

15           That was a case of abuse of discretion. And I'm not  
16 accusing Your Honor of abuse of discretion. But I will say that  
17 that is a case in which the Court found an abuse of discretion  
18 where the district court followed the defendant's version of the  
19 facts, page 1258, in a case where the defendant engaged in  
20 hardball tactics designed to avoid resolution of the merits of  
21 this case, page 1263.

22           And I have to say, Your Honor, that just as Frontier  
23 wants this district court decision of *Karrani v. JetBlue* to serve  
24 as a model for this case, which Your Honor seemed to accept even  
25 though *Karrani* is a frivolous case where JetBlue didn't do

1 anything wrong but was accused of racial discrimination because  
2 it told a man that he had to use the aft lavatory instead of the  
3 front one, that case has nothing to do with the facts of this  
4 case. But I would say that *Ahanchian* could serve as a model and  
5 is instructive that both sides of a dispute need to be given an  
6 equal set of rules. And that's all I'm asking for.

7           These are nice people that I represent, Your Honor.  
8 They deserve a fair shake. And I don't think they've gotten it.  
9 And I'm not accusing anybody of anything. I'm just saying that  
10 it certainly seems odd that we have had 75 percent of our  
11 discovery requests objected to, and those objections approved by  
12 the Court. We have had motions to compel denied because they  
13 didn't fit within certain local rules. Yet, the motions  
14 filed -- the motion filed by Frontier, seems to me, to make all  
15 of the same violations.

16           **THE COURT:** Are you saying that this Court and not  
17 just Judge Koppe denied it because of a technicality of the local  
18 rules, or was that just Judge Koppe?

19           **MR. McKAY:** That was one of the early ones, and Judge  
20 Koppe did have a secondary holding. So I can only say that that  
21 was one of the reasons that she denied it.

22           **THE COURT:** All right. Mr. Maye.

23           **MR. MAYE:** Thank you, Your Honor. I think that --

24           **THE COURT:** Let me ask you this: As it relates to  
25 your request for the names, what about this argument now -- and

1 I -- honestly, I don't recall the specific order. It's just not  
2 possible given the nature of number of cases I have and the  
3 number of documents in this case. But there is some concern that  
4 to give you the names of witnesses they might have would violate  
5 some privacy act.

6 What's your position on that -- or not some privacy  
7 act --

8 **MR. MAYE:** There's no bases -- there's no bases for  
9 that, Your Honor. The statute and regulation applied to air  
10 carriers who possess the information of the passengers. Also, we  
11 determined that we would be cooperative, and we gave plaintiffs  
12 every single name of every passenger on flight because we wanted  
13 to avoid litigation, motion practice. Typically, Courts will  
14 order a few rows behind an incident, a few rows in front --

15 **THE COURT:** So you've given them every name of every  
16 passenger on this flight?

17 **MR. MAYE:** That's correct.

18 **THE COURT:** And now, in your interrogatories, you're  
19 asking them to identify which of the names that they already have  
20 are the people that might have witnessed what it is you're  
21 asking --

22 **MR. MAYE:** That's correct, Your Honor. There's  
23 absolutely no basis for (indiscernible).

24 **THE COURT:** You already have the names of everybody  
25 on the flight?

1                   **MR. McKAY:** I do.

2                   **THE COURT:** And it's somehow to go back to counsel in  
3 the context of this case on a discovery document that's not filed  
4 on the docket, and it will probably only become public record if  
5 the case goes forward to trial and evidence is admitted and  
6 everything else.

7                   You're saying that you shouldn't be -- you shouldn't  
8 be required to give him the names of who you believe might have  
9 witnessed these things because of this privacy issue?

10                  **MR. McKAY:** It would have been awesome to have a  
11 similar discussion about the previous objections that they had,  
12 but, Your Honor, if you order me to --

13                  **THE COURT:** Is that not -- is that not a tit for tat?  
14 Am I being unreasonable in calling it what I called it?

15                  You don't have to answer. Just go back and read the  
16 transcript. And maybe I'm wrong, as well. I'll read it, as  
17 well.

18                  All right. Anything else, Mr. Maye?

19                  **MR. MAYE:** No, Your Honor. You know, we've -- we've  
20 done our best to cooperate with plaintiffs. Apparently, we have  
21 different views of the facts of the case. And we've made great  
22 efforts to be collegial and cooperative. And -- and at times, we  
23 have been successful. Other times, it's been more  
24 challenging --

25                  **THE COURT:** Well.

1           **MR. MAYE:** -- in this case. This motion, we decided  
2 not to ask for sanctions because we didn't want to escalate  
3 things. We just wanted to bring the issues to the Court and get  
4 them resolved. Clearly, the responses to our discovery  
5 (indiscernible).

6           **THE COURT:** All right.

7           **MR. MAYE:** Thank you, Your Honor.

8           **THE COURT:** Mr. McKay, is there anything else you  
9 want to tell me before I rule?

10           **MR. MCKAY:** I'm afraid that there's nothing I could  
11 say that would change your mind, Your Honor.

12           **THE COURT:** Fair enough.

13           All right. Legal standard for motions to compel,  
14 generally, if a party resists discovery, Rule 37(a) authorizes  
15 the requesting party to file a motion to compel, which is what  
16 Frontier Airlines has done in this case.

17           The motion must include a threshold showing that the  
18 requested information is relevant and proportional. *Tsatas v.*  
19 *Airborne Wireless Network, Inc.*, that's a Westlaw case from 2022.  
20 It's a District of Nevada case, January 7th, 2022. That's  
21 Westlaw 74003 at 2.

22           Also cite to Federal Rule of Civil Procedure 26(b)(1)  
23 as it relates to the relevant -- or a threshold showing.  
24 Relevance is a low threshold and merely requires a possibility of  
25 a nexus between the information sought and the claims or defenses

1 of a party. That's the *Tsatas* case.

2 As it relates to proportionality, that requires the  
3 Court to consider the importance of the issues at stake in the  
4 action and the amount in controversy, the parties' relative  
5 access to relevant information, the parties' resources, the  
6 importance of the discovery in resolving the issues, and whether  
7 the burden or expense of the proposed discovery outweighs its  
8 likely benefit. That's Federal Rule of Civil Procedure 26(b)(1).  
9 The party resisting discovery bears the burden of showing why the  
10 discovery should not be permitted because -- because it is  
11 irrelevant, overbroad, or unduly burdensome. *Fosbre v. Las Vegas*  
12 *Sands Corporation*. That's a 2016 Westlaw case, 54202 at 4. It's  
13 a January 5th, 2016, case out of the District of Nevada. And  
14 citing that same case, finally, to meet this burden, the  
15 objecting party must specifically detail the reasons why each  
16 request is objectionable.

17 I do find in this case that the requested information  
18 is relevant and proportional. I don't find that the objections  
19 from the plaintiff are warranted. Again, I cite the one example  
20 of they're simply asking for, Give us the names of people that  
21 you say witnessed this.

22 You already have that list of names. That, to me, is  
23 exactly the type of thing that should be compelled, and that's  
24 why I'm going to grant it. So I'm going to grant the motion to  
25 compel in its entirety.

1 Under Rule 37 sanctions, if the Court grants a motion  
2 to compel, the Court must require the party whose conduct  
3 necessitated the motion, the party's attorney, or both to pay the  
4 movant's fees -- that's Federal Rule of Civil Procedure  
5 37(a)(5)(A) -- but not if the party moved before trying in good  
6 faith to obtain the discovery, the opposing party's nondisclosure  
7 was substantially justified, or other circumstances make an award  
8 of an expense unjust. That's the same rule.

9 I'm going to use my discretion and say that I don't  
10 want an award of sanctions under Rule 37 to be perceived as  
11 unjust in this case. It's a really close call. I know  
12 Mr. McKay's perceptions are that this Court is biased and not  
13 being fair to his clients and not giving them a fair shake.

14 Again, I'm somewhat at a loss for that. While I  
15 recognize I ruled against you on a number of -- or at least part  
16 against you on a number of discovery motions, that certainly  
17 doesn't indicate that this Court is somehow biased against your  
18 clients. I look at each motion on the facts presented in the  
19 motion and the law that I must apply and try to make the best  
20 decision I can make.

21 I do think that in this case, the plaintiffs have  
22 requested extensive discovery that, I believe, based upon my  
23 prior orders, was above and beyond the relevance and  
24 proportionality aspects that I'm required to consider, and that's  
25 why I've denied them. But I don't want to put any further fuel

1 on any flames by awarding fees for sanctions. And so, under 3,  
2 where an award might be unjust or considered unjust, I'm going to  
3 find that that is the basis for me not to order sanctions.

4 I'll also note that the plaintiffs -- or, I'm sorry,  
5 the defendants didn't ask for sanctions, which, I think, probably  
6 for the same reason I'm citing and which further justifies the  
7 Court's decision.

8 I'll simply say I know there's another on my docket  
9 from yesterday. I suspect there will be more. I would hope  
10 Frontier Airlines, in understanding in serving the public, that  
11 they don't want the sort of allegations that occurred here. And  
12 I'm not saying I accept them as true, but I would assume  
13 Frontier, as a business, says, We don't want that happening. And  
14 I would like to think Frontier would say, We want to provide  
15 everything that we think is reasonable, proportional under the  
16 law. It's an open book. Here's the stuff. Let's resolve this  
17 problem.

18 You know, I don't want Frontier hiding the ball.  
19 Much probably to Mr. McKay's disbelief about my position, the one  
20 thing I can't stand in discovery is people playing hide the ball.  
21 I hated it when I was in private practice. It's an abuse of the  
22 system. In this case, I've ruled in your favor on some things  
23 because I didn't think they were proportional to the case. But  
24 again, I encourage you to try to be as open and work these things  
25 out.



1           Mr. McKay, I apologize for your perception of the  
2 Court and its belief in your case. Again, I don't know where  
3 that came from, and I certainly am cognizant of the words that I  
4 write in orders and the effect that they have. And we try to be  
5 careful in what we do. There are a lot of orders that go out.  
6 We have a very large caseload, and sometimes things may go out  
7 that people take the way that we didn't intend it to be taken.  
8 And if that has occurred, I apologize. I assure you that I  
9 continue to be completely fair and unbiased and give your  
10 clients the fair shake that they deserve under the rules of  
11 discovery, and I'll continue to do that.

12           With that, anything else, Mr. McKay?

13           **MR. MCKAY:** Your Honor, I greatly appreciate that.  
14 And I am sorry if the Court felt that I was accusing you of  
15 anything. I'm not accusing you of anything. I am simply saying  
16 that as I look at what has transpired so far, it seems to me to  
17 be weighted differently than it should be. That's all I'm  
18 saying.

19           **THE COURT:** I accept your opinion, and --

20           **MR. MCKAY:** And apology.

21           **THE COURT:** Well, and I accept your apology, as well.  
22 And again, I -- you know, I assure you, having practiced for many  
23 years, I understand where you're coming from. And I'm putting it  
24 aside, and I'm going to go forward and continue to try to be as I  
25 was when I first was appointed to the case, and that's completely

1 unbiassed and call it as I see it. And that's what I'll continue  
2 to do.

3 **MR. McKAY:** Thank you, Your Honor. I appreciate  
4 that, and especially since Mr. Maye and I want to speak with you  
5 about some procedural items that we agree on in terms of how to  
6 get this case best postured for trial.

7 **THE COURT:** All right. You want to do that now,  
8 you're saying, or --

9 **MR. McKAY:** Could we?

10 **MR. MAYE:** We'd like to, Your Honor.

11 **THE COURT:** Sure.

12 **MR. MAYE:** We both talked about the need to extend  
13 some deadlines given that this month we have about nine  
14 depositions scheduled. It's Thanksgiving and it's unlikely we  
15 will be able to complete deposition of experts. And, of course,  
16 the 30(b)(6) depositions can't take place until the trial judge  
17 rules on the pending motions.

18 And now we have the motion for protective order, so  
19 Mr. McKay and I have discussed raising the issue with you if we  
20 could extend the dates maybe until February for close of  
21 discovery. You've already granted -- well, I don't know if we  
22 talked about timeline, but you've already granted extensions for  
23 two of the experts until February because they're not available  
24 prior to that.

25 **THE COURT:** Well, probably not going to like my

1 answer from the bench, which is going to be put it -- let's put  
2 it in a stipulation so that we have something.

3 What -- I can't recall. I was looking at the docket  
4 today.

5 What are we at on the stipulations, what number? Are  
6 we on the third, or are we on the tenth?

7 **MR. MAYE:** Far too many. I think we're at nine.  
8 This will be the ninth --

9 **THE COURT:** Well, that's --

10 **MR. MAYE:** -- and I think that has to do with the  
11 motion practice.

12 **THE COURT:** Understood. And again, you know, it  
13 would be kind of hypocritical of me to say here a few minutes ago  
14 that I want to give the people -- the parties the opportunity to  
15 have some discovery and present their case and then say no, you  
16 can't have more time.

17 But I would say, is there something we can come to  
18 one last stipulation, again, always barring some extreme  
19 unforeseen circumstance?

20 Things happen in life, but barring that, this being  
21 the last one, I would be inclined to grant that if you're both in  
22 agreement with it.

23 **MR. McKAY:** I don't want the Court to get the wrong  
24 impression. Mr. Maye and I have been friends for years and we're  
25 still friends. All right? We're just sparring over this case.

1 His client has some extreme positions on relevance.  
2 We have some disagreements with that. But this is not a  
3 situation where we're going to leave this courtroom and have an  
4 argument over --

5 **THE COURT:** Well, that reminds me of something I  
6 wanted to tell you, and that is that I don't take what you're  
7 doing in your advocacy personally, so don't --

8 **MR. McKAY:** Thank you.

9 **THE COURT:** -- don't perceive that I do.

10 **MR. McKAY:** All right. Thank you.

11 **THE COURT:** I learned long ago in my practice that if  
12 I took what went on at work personally, I would have a much  
13 shorter, unhappier life, so I try not to do that.

14 **MR. McKAY:** So what we've got is he's just disclosed  
15 three experts on Friday. So I have to figure out, with discovery  
16 ending on the 18th, where are those depositions going to occur.  
17 I've -- I've got experts that he wants to depose, so we're really  
18 talking about just a finite period of time to wrap up the witness  
19 depositions, wrap up the expert depositions. It shouldn't really  
20 take too long at all. We don't have a trial date, so --

21 **THE COURT:** Yeah. Pretrial order will come later  
22 after any motion -- motions you all want to file --

23 **MR. McKAY:** Right. And I think that's set now for  
24 January.

25 **THE COURT:** So just paraphrase what you just said in

1 the stipulation in the section of, you know, what we need to do,  
2 and we'll watch for the stipulation to come. And as long as it's  
3 just got that in there -- and you guys are usually pretty good at  
4 your stipulations -- we'll give you that extra time, and  
5 hopefully, that will be the last one.

6 **MR. McKAY:** That sounds good, Your Honor.

7 One other thing, if I may. We -- and I know you've  
8 got a thousand cases, and this probably isn't going to ring a  
9 bell. But I had to take all of the depositions of the flight  
10 attendants and the pilots very quickly under Judge Koppe's  
11 original order because she only gave us a month to -- to amend  
12 the named parties. I started this off as Does 1 through 6. And  
13 so I had to quickly take their depositions.

14 During the captain's deposition, he said he hadn't  
15 had any training on antidiscrimination, and then couple years  
16 later, he answers an interrogatory saying he did. And I have  
17 been asking for discovery for that.

18 Can I take his deposition again quickly on a limited  
19 basis to ask him? because Your Honor just said that there must be  
20 another way to get to this information, and I've used them all.

21 **THE COURT:** Is there another interrogatory you can  
22 propound on them that asks why the discrepancy in saying that you  
23 did and didn't?

24 **MR. McKAY:** I mean, interrogatory answers are written  
25 by lawyers, Your Honor. You know that.

1                   **MR. MAYE:** Can I address that --

2                   **THE COURT:** Yes.

3                   **MR. MAYE:** -- Your Honor?

4                   First, Your Honor has already ruled on this issue,  
5 and so I -- it's not appropriate, this request.

6                   **THE COURT:** You know, let me just stop you there.  
7 I -- this goes back -- I feel uncomfortable ruling on this from  
8 the bench. I would prefer you to, you know --

9                   **MR. MAYE:** Maybe we can work it out, and --

10                  **THE COURT:** Yeah. I'd rather have you put something  
11 in writing, and then you could respond if you can't otherwise  
12 work it out. I don't want to do that off the top of my head  
13 today.

14                  **MR. MAYE:** I just wanted to say, Mr. McKay mentioned  
15 that, you know, we're colleagues and friends and with my clients  
16 taking an extreme position. We do not view our clients taking an  
17 extreme position. We just aren't. We think our client's taking  
18 the right position.

19                         We have a completely different view of the case,  
20 so --

21                  **THE COURT:** Thus all the motions to compel and  
22 everything else, so --

23                  **MR. MAYE:** -- we take issue with that, but we're  
24 doing our best to cooperate and --

25                  **THE COURT:** All right. So on the deadlines, if you

1 could get that stipulation sooner rather than later, that will  
2 help. The minute order will indicate that the motion to compel  
3 has been granted as stated on the record and will serve as  
4 the -- the order.

5 Now, at the risk of having another number of issues  
6 brought up, is there anything else you want to bring up, Mr. --

7 **MR. McKAY:** Will you be watching the game tomorrow?

8 **THE COURT:** I'm not sure which one you're referring  
9 to, but with any luck --

10 **MR. McKAY:** Badgers vs. Terrapins.

11 **THE COURT:** Ha, ha. No. I'll probably be on the  
12 golf course and not torture myself with 2022 Wisconsin Badgers.  
13 Anything else from the defense?

14 **MR. McKAY:** No, Your Honor.

15 **THE COURT:** All right. Thank you. Court's in  
16 recess. You both have a good weekend.

17 **MR. MAYE:** Thank you, Your Honor.

18 *(Proceedings adjourned at 2:11 p.m.)*

19 --o0o--

20 I, Paige M. Christian, a court-appointed transcriber,  
21 certify that the foregoing is a correct transcript transcribed  
22 from the official electronic sound recording of the proceedings  
23 in the above-entitled matter.

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25 Date: December 30, 2022

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/s/ Paige M. Christian

Paige M. Christian, RPR, CRR, CCR #955  
Official Court Reporter  
United States District Court  
District of Nevada